IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR. JUSTICE C.V.RAMULU

W.P. No.27107 of 2003

Between:

Mekala Komala, W/o. Mekala Rajaiah,
aged about 37 years, Occ: President,

Mandal Praja Parishad, Elathurthi,
R/o. H.No.5-79/14/3, Suraram Village,
Elkathurthi Mandal, Karimnagar District - 505 476.

..... PETITIONER

AND

1. The Revenue Divisional Officer,
   Karimnagar, Karimnagar District.

2. State of A.P., Rep. by its Secretary,
   Secretariat, Panchayat Raj Department, Hyderabad.

3. State Election Commission,
3rd Floor, Budha Bhavan, M.G.Road,
Secunderabad - 500 003.

4. Yelthuri Swamy, S/o. Mallaiah,
aged about 30 years, Occ: Member,

Elkathurthi Mandal Praja Parishad,
R/o. Gopalpur, Elkathurthi Mandal,
Karimnagar District.

5 Avirneni Gopal Rao, S/o. Ranga Rao
Elkathurthi Mandal Praja Parishad,

R/o. Jeelgula, Elkathurthi Mandal,

Karimnagar District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing the impugned notice under Form - V in proceedings No.N/6747/2003, dated
15-12-2003, as arbitrary, illegal and contrary to Articles 14 and 243-D of the Constitution of India, and consequently set-aside the said notice.

Counsel for the Petitioner: MR.D. JAGAN MOHAN REDDY

Counsel for Respondent Nos.1 & 2: G.P. FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for Respondent No.3: Mr. V.V. Prabhakar Rao.

Counsel for Respondent No.5: Mr. P. Sadasiva Rao.

The Court made the following :

ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

The petitioner in the instant writ petition challenges the action of the 1st respondent-Revenue Divisional Officer, Karimnagar, Karimnagar District, in issuing the impugned notice under Form – V in proceedings No.N/6747/2003,

dated 15-12-2003, and accordingly prays for issuance of a Writ of *Mandamus* declaring the impugned proceedings as arbitrary, illegal and contrary to Articles 14 and 243-D of the Constitution of India.

The petitioner was elected as President of Elkathurthi Mandal Praja Parishad, Karimnagar District, which is reserved for Scheduled Castes (Women). That as at present, she is the only member entitled to fill the post of the Office of the President of the Elkathurthi Mandal Praja Parishad, since no other member belonging to the Scheduled Castes (Women) is available for occupying the said position.

Be it as it may, the 1st respondent issued the impugned notice in Form – V duly informing all the members of the Mandal Praja Parishad including the petitioner herein that he had received a notice of intention to make a motion expressing want of confidence in the President of Elkathurthi Mandal Praja Parishad as required under sub-section (2) of Section 245 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'). The 1st respondent having received the notice in exercise of the power conferred under sub-section (1) of Section 245 of the Act gave the notice convening a meeting of Mandal Praja Parishad, Elkathurthi, to be held at the office of the Elkathurthi Mandal Praja Parishad on 06-01-2004 at
11-00 a.m. for considering the motion of no confidence.

In this case, the petitioner contended that the impugned notice suffers from constitutional infirmities being violative of Article 243-D of the Constitution of India, which mandates that seats shall be reserved for the Scheduled Castes and Scheduled Tribes and also for reservation of seats for women belonging to Scheduled Castes and Scheduled Tribes. That in terms of the said Constitutional mandate, the State Government issued notification, dated 30-05-2001, in exercise of the power under Section 152 of the Act reserving the Office of the President of Elkathurthi Mandal Praja Parishad, Karimnagar District, for Scheduled Castes (Women). The petitioner is the only women candidate belonging to the Scheduled Castes among the elected members of the Elkathurthi Mandal Praja Parishad. The contention appears to be that this motion of no confidence is a futile exercise since no other candidate as at

present would be available to fill the casual vacancy for which purposes election is required to be held within a period of six months in terms of Section 153(6) of the Act.

The submission, at the first instance, appears to be an attractive one, but on a deeper scrutiny of the provisions of the Act and the Constitutional provisions, we find no substance in the submission. There are no legal impediments for issuing a notice expressing no confidence in the President of the Mandal Praja Parishad even in cases where there is no possibility of any other candidate being elected, in case the incumbent in the office is to be voted out by way of no confidence motion.

That for whatever reason, the Legislature did not provide prohibiting a motion of no confidence against the president who in a given case may be a lone member entitled to occupy the office of the president by virtue of reservations made under the provisions of the Act and the Rules framed thereunder. The 1st respondent has no authority in law to refuse to receive the notice and convene the meeting, as the notice received by him is an order in conformity with the Act and the Rules framed thereunder. It is nobody's case that the notice received by him expressing want of confidence in the petitioner suffers from any legal or constitutional infirmity and the 1st respondent merely following the provisions convened the meeting on 06-01-2004.

However, no confidence motion was carried on
06-01-2004 expressing want of confidence in the petitioner herein as the President of the Elkathurthi Mandal Praja Parishad.

This Court vide its order, dated 30-12-2003, having directed the writ petition to be posted for further hearing on 06-01-2004 further directed "the meeting may go on but the resolution shall not be given effect to". This order was modified vide order, dated 06-02-2004, in the following manner:

> "It is stated that no confidence motion against the petitioner was proceeded on

06-01-2004, expressing no confidence against the petitioner. In view of the same, interim order is modified, permitting the govt. to make alternative arrangement by appointing Special officer to manage the affairs of Mandal Parishad Elkathurthi, Elkathurthi (M), Karimnagar District."

That in terms of the directions of this Court, the Government issued Memo, dated 06-08-2004, directing the District Collector, Karimnagar District, to implement the orders of this Court and in turn the District Collector has appointed the 1st respondent as Special Officer to manage the affairs of the Mandal Praja Parishad vide proceedings, dated 07-08-2004.

The interim order passed by the learned single Judge of this Court, dated 06-02-2004, is the subject matter of
W.A. Nos.1532 and 1615 of 2004. This Court vide its order, dated 12-10-2004 in W.A.M.P No. 2809 of 2004 in
W.A No. 1532 of 2004, granted stay of all further proceedings in pursuance of Form – V notice, dated 15-12-2003. The Government in order to implement the said order passed by the Writ Appellate Court, put the petitioner back into the Office of the President by virtue of which she is holding the office as on today.

That in view of the fact that the motion of no confidence moved against the petitioner was carried on, it is impermissible for the petitioner to continue to hold the office, since we are not inclined to agree with the contention urged by the learned counsel for the petitioner.

In the result, we direct the 1st respondent herein to give effect to the motion of no confidence and all further consequences shall follow.

There are no legal impediments for holding the elections to fill up the casual vacancy as is required under
Section 153(6) of the Act within a period of six months from the date of occurrence of the vacancy by fresh elections.

Having regard to the facts and circumstances of the case, we consider it appropriate to direct the Government to issue notification under sub-section (2) of Section 245 of the Act removing the petitioner from the Office of the President forthwith and further direct that the resultant vacancy shall be filled in, in accordance with law, within a period of ten weeks from the date of receipt of a copy of this order.

The law shall be set in motion for the aforesaid two purposes immediately. There shall be an order accordingly.

Accordingly, the Writ Petition is disposed of without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:10-12-2004.

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C.V. RAMULU, J

NOTE:

Furnish copy of the order by 13-12-2004.

(B/O)

PV/KS

To

1. The Revenue Divisional Officer,
   Karimnagar, Karimnagar District.

2. The Secretary, State of A.P.,
   Secretariat, Panchayat Raj Department, Hyderabad.

3. The State Election Commission,
   3rd Floor, Budha Bhavan, M.G.Road,
Secunderabad - 500 003.

4. Two C.Cs. to G.P. for Panchayat Raj & Rural Development,

High Court of A.P., Hyderabad (O.U.T.).

5. Two C.D. copies.